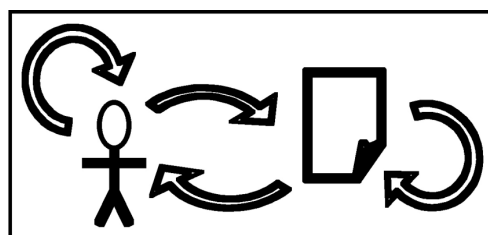




## Legal issues in Social Media

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@culturelibre | @OutFindCA



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In using information...

The Law **forbids** what  
technology **allows**

Our **social norms** have not  
yet adapted, that is why we  
revert to « **hard law** »



In using digital information...

The Law **forbids** what  
technology **allows**

|                                  |            |
|----------------------------------|------------|
| Copyright                        | Trademarks |
| Privacy & personal information   | Patents    |
| Anonymity & image rights         | Secrets    |
| Speech issues:                   | ...        |
| Libel, defamation, hate, freedom | ...        |



In using digital information...

Is there a **way out?** **forbids** what  
**allows**

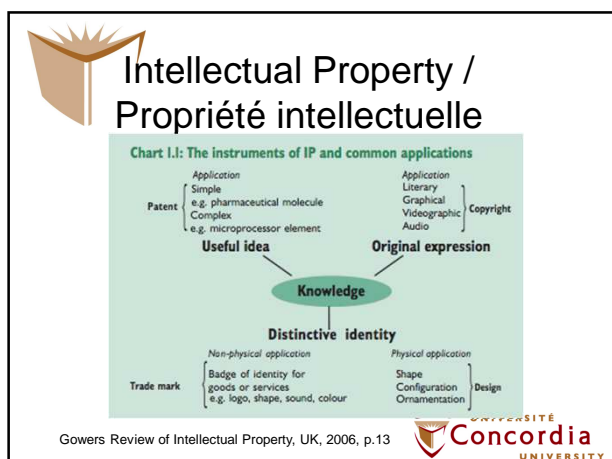
|                                  |                     |     |
|----------------------------------|---------------------|-----|
| Copyright                        | <b>Permissions!</b> | ks  |
| Privacy                          |                     | ts  |
| Anonymity & im                   |                     | ts  |
| Speech issues:                   |                     | ... |
| Libel, defamation, hate, freedom |                     | ... |



## Outline

- Copyright
- Privacy & Personal Information
- Anonymity & Image Rights
- Solutions: controls or permissions?





| Intellectual Property /<br>Propriété intellectuelle |                     |
|---|---------------------|
| Copyright   | Droit d'auteur      |
| Patents   | Brevets             |
| Trademarks  | Marques de commerce |
| Industrial Designs                                  | Design Industriels  |
| ...   | ...                 |

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| Copyright / Droit d'auteur   |   |
|--|---|
| Artistic,<br>literary,<br>dramatic,<br>musical,<br><b><u>works</u></b> | <b><u>Œuvres</u></b><br>artistiques,<br>littéraires,<br>dramatiques,<br>musicales |

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| Copyright / Droit d'auteur  |   |
|---|---|
| Artistic,<br>Everything we use<br>in social media!<br>musical,<br><b><u>works</u></b> | <b><u>Œuvres</u></b><br>Tout ce que<br>nous utilisons<br>sur les médias<br>sociaux! |

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| © = contrôle  |  |
|---|--|
| (1) Protect a work's<br>economic market<br>(right-holder) | (1) Protéger le marché<br>économique d'une<br>oeuvre (titulaire) |
| (2) Protect the creative<br>endeavour (creator)           | (2) Protéger la démarche<br>artistique (créateur)                |

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| Copyright   | Droit d'auteur  |
|---|---|
| Economic + artistic right   | Droit économique + artistique   |
| [Sole] Right to exploit<br>(produce, reproduce, execute in public,<br>publish; + adapt, translate...) | Droit [exclusif] d'exploitation<br>(produire, reproduire, exécuter en<br>public, publier; + adapter, traduire...) |
| Automatic (fixation, originality)   | Automatique (fixation, originalité)   |
| Term (public domain)  | Durée (domaine public)  |
| Transfer in writing (contract)  | Transfert par écrit (contrat)   |
| Moral right (Integrity, paternity)  | Droit moral (Intégrité, paternité)  |

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## Absolute Control? Contrôle absolu ?

«La propriété c'est le vol!» (Proudhon)  
«He who lights his taper [candle] at mine  
receives light without darkening me»  
(Jefferson)



## Contrôle absolu ? Not exactly / pas exactement

Fair dealings / Utilisation équitable  
(Fair use)  
& Exceptions

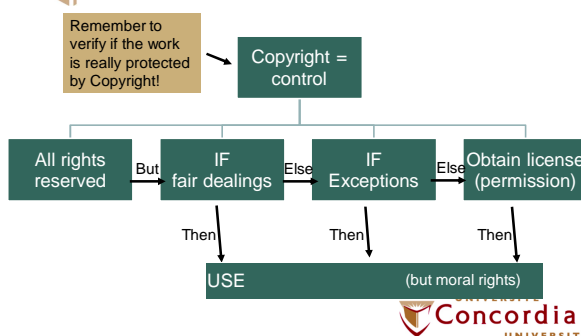


## Contrôle absolu ? Not exactly / pas exactement

Else, get permission!  
Sinon, obtenir permission!



## Copyright Methodology



## Privacy & Personal Info

- Data for your identity
  - Name
  - Student record
  - Credit card numbers
  - Date of birth
  - ...
- Data protection
- Principles:
  - Collection Limitation
  - Data Quality
  - Purpose Specification
  - Use Limitation
  - Security Safeguards
  - Openness
  - Individual Participation
  - Accountability

Source: OECD, 1980



## Anonymity & Image rights



- Not allowed, unless "public interest":
  - engaged in a public activity or has acquired a certain notoriety
  - previously unknown individual is called on to play a high-profile role
  - accidentally places him or her in the photograph in an incidental manner.

Aubry v. Vice Versa, ¶ 58



So... what are we to do?

Ask for permission,  
Transfer risk  
Keep records  
Or refrain from using information



So... what are we to do?

**Policies!**

VPIRSG-2, -4, -5, -9, VPRGS-9,  
Academic Codes

**Contracts!**

Wavers, Permissions, Licences

Or refrain from



## “Code is Law” (Lessig)

“A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation”  
(Qc Civil Code, s. 1378)



## Further reading

- Aubry v. Éditions Vice-Versa inc., [1998] 1 SCR 591
  - Para 58, <http://canlii.ca/1/f6t7>
- Canadian Intellectual Property Office, *A Guide to Copyrights*, Industry Canada, 2008
  - [http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wrt0281.html](http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wrt0281.html)
- *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339
  - Para 52-76 <http://www.canlii.org/en/cascc/doc/2004/2004scc13/2004scc13.html>
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  - <http://library.concordia.ca/help/copyright/>
- Copyright Act, R.S.C. 1985, c. C-42
  - Art. 3, 5, 6, 13, 14.1-14.2, 27-28.2, 29-32.2 <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-42/>
- Murray, Laura J. and Samuel E. Trosow, *Canadian copyright : a citizen's guide*, Toronto : Between the Lines, 2007
  - <http://clues.concordia.ca/records/b2276747-50>
- OECD, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, 1980
  - [http://www.oecd.org/document/18/0,3343,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1,00.html)

